
Chapter 2 – Compensation

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Section I Fair Labor Standards Act (FLSA)

Purpose

The purpose of this policy is to provide guidelines for implementing the provisions of the Fair Labor Standards Act (FLSA).

Scope

This policy applies to all employees.

A. Definitions

1. Compensatory Leave

Paid time off which non-exempt employees may receive in lieu of overtime pay.

2. Department of Labor (DOL)

The U.S. Department of Labor is the federal agency in charge of enforcing the FLSA.

3. Fair Labor Standards Act

The Fair Labor Standards Act of 1938 (FLSA) is a federal statute which establishes minimum wage requirements and provisions for overtime pay, provisions for compensatory time, child labor, equal pay, and recordkeeping.

4. Joint or Dual Employment

An employment situation that arises when an employee performs separate jobs for the same employer; these jobs may be at the same or different rates of pay. The total hours worked in these separate jobs are aggregated for purposes of computing hours worked.

5. Exempt Employee

A salaried employee who because of the nature of the job duties performed is not subject to the overtime provisions of the FLSA and therefore not entitled to overtime pay.

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6. Hours Worked

Hours that an employee actually works.

7. Minimum Wage

Minimum hourly rate that an employee must receive for work performed; that rate is established by federal and state law. The minimum wage requirements do not apply to exempt employees.

8. Non-Exempt Employee

An employee who is entitled to overtime pay for the hours worked over forty in a workweek.

9. On-Call

Being available to work upon the call of the LDSS generally with some restrictions on the employee's movement and activities.

10. Regular Rate of Pay

The average hourly rate of pay for an employee.

11. Retaliation

Adverse actions (discharge, unfair or discriminatory pay practices or other inequitable terms and conditions of employment) taken against an employee who has filed a lawsuit under the FLSA, instituted any proceedings under the FLSA, testified or agreed to testify in a proceeding instituted under the FLSA, or otherwise has asserted a right or opposed a practice under the FLSA.

12. Salary

The predetermined amount of compensation that an employee receives regularly on a weekly or less frequent basis which is not subject to reduction because of the quality or quantity of the work performed.

B. Hours of Work

1. Definition of Work

All hours that an employee is required, or permitted, to engage in activities that involve mental or physical exertion on behalf of or for the benefit of the LDSS. This includes all time that the employee is required to be on the premises of the LDSS or at some prescribed place (e.g., home visits or court) or that an employee is required or permitted to work (e.g., working at home or staying after hours at the office).

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2. All Work Must be Counted as Hours Worked

The general rule is that if the LDSS knows or has reason to believe that an employee is performing work, the time must be recorded as hours worked whether the employee volunteered to perform the work or was just dropping something off on the way home. Accordingly, employees cannot “volunteer” their time to perform extra duties or duties outside normal work hours without reporting them as hours worked.

a. Work Activities

Activities that are generally considered “work” include:

- (1) Waiting time if the employee can not use the time effectively for his or her own purposes such as when an employee is not relieved of all duties (e.g., “listen for the phone while you are waiting”);
- (2) Rest or break periods of less than 20 minutes;
- (3) Meal breaks of less than 30 minutes;
- (4) Time the employee sleeps while on duty provided that it is less than 24 hours in a day;
- (5) Pre-shift and post-shift activities required by the LDSS;
- (6) Required training;
- (7) LDSS required medical examinations;
- (8) Grievance activity;
- (9) Time actually worked while on call; and
- (10) All activities performed for the benefit of the employer during regularly scheduled hours (e.g., travel to work locations or training). Note: that a determination is always very fact specific and broad generalizations as to what time is compensable can not be made lightly.

b. Non-work Activities

Activities that are related to a job but are not considered work include:

- (1) Time spent in civic and charitable activities (if not under the employer’s request or direction);
- (2) Voting time;

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- (3) On-call time if the employee's activities while on call are not unduly restricted;
- (4) Home to work travel;
- (5) Time spent waiting to work; and
- (6) Breaks of longer than 20 minutes and meal breaks 30 minutes or longer if the employee is completely relieved of all duties.

c. Volunteered Labor

As well intended it may be, a non-exempt employee should not "volunteer" time to work beyond scheduled work hours. Nor should an employee change the hours worked without permission of the supervisor.

3. Hours Actually Worked

Hours actually worked do not include time spent in non-compensable activities such as on-call or rest time. It also does not include the following special situations:

a. Occasional and Sporadic Work for Same LDSS

All employment for the same LDSS, whether in one or more capacities, counts towards the hours worked. For public employers there is an exception when the additional work is part-time, occasional or sporadic, is different than the primary work, and done on a voluntary basis—e.g., a social worker being hired by the county recreation program to referee sporting events or to drive the school bus for a field trip.

b. Lectures and Training Time

If the time is outside normal work hours and the program is not directly related to the employee's job, such time will not count as hours worked provided that attendance was voluntary and no work for the LDSS was performed.

c. Paid Time Off

Paid time off does not count as hours worked.

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4. Travel Time

Time expended during the regular work schedule in travel and any time during which the employee is performing work, including the “work” of driving, must be counted as hours worked for both minimum wage and overtime computation purposes.

a. Travel During Work Hours

Travel and related activities on regular working days during normal working hours as well as travel and related activities occurring during corresponding hours on non-working days is work time.

Example: If an employee's regular work hours are from 9 a.m. to 5 p.m., Monday through Friday, travel time spent between 9 a.m. and 5 p.m. on any day of the week, including Saturday and Sunday, must be considered as hours worked.

b. Overnight Travel

When attending a meeting or business function overnight, only the hours that correspond to normal working hours and any additional time spent in meetings or business functions are counted as hours worked. Meals, receptions, social events are not hours worked unless attendance is required or work is performed.

- (1) Travel time away from home which occurs outside regular working hours is not counted as hours worked if the employee is a passenger on an airplane, train, boat, bus, other common carrier, or as a passenger in an automobile.

Example: If a non-exempt employee who normally works 9:00 a.m. to 5:00 p.m., Monday through Friday, is required to travel by plane on Sunday night in order to be at an out-of-town meeting on Monday morning, the travel time is not counted as hours worked.

- (2) If a non-exempt employee elects to drive to an overnight assignment instead of using offered public transportation, the LDSS has the option of counting as hours worked the lesser of the actual time spent by the employee in driving or the time that would have been expended if the employee used public transportation.

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5. Recording Hours Worked

It is the responsibility of the LDSS to record all time actually worked and to maintain the records required under the FLSA. Although the LDSS can require the non-exempt employee to record his or her hours worked, the employee's failure to do so does not relieve the LDSS of the responsibility to record such time. Hours worked may be recorded in as small an increment as time records are kept; e.g., by fifteen minutes. Rounding to the nearest increment is permissible, provided it is done consistently in the same manner.

C. Overtime

1. Premium Pay

For each hour worked over forty in a workweek, a non-exempt employee receives premium pay in the amount of 1.5 times the regular rate of pay. An exempt employee is not entitled to overtime pay or compensatory time.

2. Calculating Regular Rate of Pay

The regular rate of pay equals the employee's total weekly pay divided by the total hours worked. If an employee is paid an hourly rate, that regular rate is generally the same as the hourly rate; but if additional compensation is provided, e.g., extra payment for being on call, that compensation must be added to the total weekly compensation.

For salaried employees the regular rate of pay is the salary divided by the number of hours that the salary is intended to compensate. The FLSA allows other methods of compensation, such as a fixed salary for fluctuating hours of work, that would effect the amount of the regular rate of pay. If an LDSS has a lot of overtime, these alternative methods of salary payments may be used.

3. Compensatory Time

At the option of the LDSS, a non-exempt employee may elect to receive compensatory time in lieu of overtime pay. Compensatory time is earned at the same rate as overtime pay--1.5 hours for each hour of overtime worked.

D. Exempt Status

1. The FLSA exempts certain employees, and provides partial exemptions to others (e.g., firefighters and law enforcement personnel, hospital workers), from the overtime and minimum wage provisions of the Act. Although an employee may perform duties that would allow them to be exempt, an LDSS may for any reason elect to treat the position as non-exempt.

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2. Employees may be exempt from overtime and minimum wage under one of the three “white collar” exemptions: executive, administrative, and professional employees. There are three requirements for meeting one of the white collar exemptions:
 - a. The employee must be paid a salary of at least \$455 per week.
 - b. Deductions from the salary for quantity or quality of work, or for less than full day disciplinary suspensions are not allowed.
 - c. The duties performed must comply with the regulations for each exemption. Job titles are not determinative of exempt status; actual job duties are the sole determinative.

E. Violations

An employee who believes that the LDSS has taken an action or has a practice that violates the FLSA, may bring a complaint to the Director. That complaint will be investigated and if it should be determined that an error or illegal practice has occurred, a correction will be made. Any compensation that may be due the employee will be promptly paid. Employees are protected against retaliatory actions when bringing such a complaint. A non-probationary employee may also initiate a grievance to challenge a violation of the FLSA.

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Section II Compensatory Leave

Purpose

The purpose of this policy is to provide procedures for earning and accumulating paid leave which is given in lieu of payment for overtime hours worked.

Scope

This policy applies to all non-exempt employees who are entitled to overtime compensation for hours worked.

A. Definitions

1. Exempt Employee

An employee who is not subject to the overtime or minimum wage provisions of the Fair Labor Standards Act (FLSA). Exempt employees are bona fide executive, administrative, computer, or professional employees paid on a salaried basis.

2. Non-Exempt Employee

An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

3. Overtime

Hours actually worked over 40 in a 7 day work period. Paid time off does not count as hours worked.

4. Compensatory Leave

Paid time off given in lieu of cash payments.

5. Workweek

A fixed seven day period that is established by the LDSS; the workweek may be uniform for all employees or it may differ for different positions or employees. The LDSS establishes the workweek for each position.

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B. Purpose of Compensatory Leave

1. Eligibility

A non-exempt employee who actually works more than 40 hours in any work week may elect to receive compensatory leave instead of overtime compensation with approval of the employee's supervisor.

2. Alternative to Cash Payment

Compensatory leave is given in lieu of a cash payment for overtime compensation.

3. Agreement to Receive Compensatory Leave

Agencies using compensatory leave rather than cash payments must obtain the written agreement of the employee prior to the performance of the overtime work. The agreement must state that compensatory leave will be received in lieu of overtime pay, that compensatory time may be used, preserved, or cashed out by the LDSS, and that no more than 240 hours (or fewer hours if such limit was established by the LDSS) of compensatory leave may be accrued at any period of time. Once an employee has accrued 240 hours of compensatory leave, the employee must receive pay for additional hours worked.

4. Overtime Hours Worked Require Approval by the Supervisor

Employees are not expected to work beyond their scheduled hours without the prior approval of a supervisor.

- a. If for any reason, an employee is held over (works beyond the end of his or her schedule) the employee is to notify the supervisor and at the election of the LDSS, the employee's schedule may be adjusted during that workweek in order to avoid overtime hours.
- b. Only on rare occasions may an employee work overtime without the approval of the supervisor.
- c. If an employee fails to promptly notify the supervisor or if there is a pattern of working overtime without approval, the employee may be disciplined.
- d. Whether approval was received and/or discipline given, the employee will receive compensatory leave or overtime pay for the overtime hours worked.

Whether cash payments are made or compensatory leave given, the compensation shall be at 1.5 for each hour of overtime worked.

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C. Accrual of Compensatory Leave

1. Rate of Compensatory Leave

The rate of compensatory leave is one and one-half hours of leave for every hour actually worked over 40 in any workweek.

2. Maximum Amount of Accrued Compensatory Leave

The maximum amount of compensatory leave that an employee may accrue is 240 hours; when that amount is reached, the employee must be paid cash for all overtime hours worked. An LDSS, however, may establish a lesser maximum amount of compensatory leave that an employee is allowed to accrue.

3. Duration of Compensatory Leave

Compensatory leave does not lapse.

4. Cashing Out of Compensatory Leave

The LDSS may cash out compensatory leave in whole or in part at any time at its sole discretion. Payment for compensatory leave must be at the employee's current regular rate of pay or at the average regular rate of pay for the past three years, whichever is greater.

5. Adjusting Scheduling

To avoid overtime pay, the LDSS may adjust an employee's schedule during the workweek so that no overtime is worked.

D. Use of Compensatory Leave

1. Scheduling of Leave

The LDSS should attempt to approve the use of compensatory leave at the time requested by the employee but has discretion to approve leave for a different time if granting the requested leave would be unduly disruptive.

2. Requiring Use of Compensatory Leave

The LDSS may at any time require an employee to use compensatory leave in order to reduce the number of hours accrued.

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E. Treatment of Leave upon Change of Status

1. Payment When Leaving the LDSS

An employee shall be paid in a lump sum for unused accrued compensatory leave when employment is terminated.

2. Payment upon Employee's Death

Payment upon an employee's death shall be made to the Administrator or the Executor of the employee's estate. If there is no Administrator or Executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Rate of Payment

Compensatory leave balances must be paid at the employee's ending average hourly rate of pay or the employee's average hourly rate of pay over the last three continuous years of employment, whichever is greater.

4. Retention of Accrued Compensatory Leave

When an employee is transferred, promoted, or demoted to another position within the same LDSS, the LDSS may cash out the accrued compensatory leave.

F. Violations

An employee who believes that the LDSS has taken an action or has a practice that violates the FLSA, he may bring a complaint to the Director. That complaint will be investigated and if it should be determined that an error or illegal practice has occurred, a correction will be made. Any compensation that may be due the employee will be promptly paid. Employees are protected against retaliatory actions when bringing such a complaint. A non-probationary employee may also initiate a grievance challenging a violation of the FLSA.

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Section III Special Duty Leave

Purpose

The purpose of this policy is to provide procedures for providing employees with paid leave as compensation for additional hours worked during specific times such as holidays.

Scope

This policy applies to all employees.

A. Definitions

1. Special Duty Leave

Paid time off when an employee is required to work on an official office closing day, a holiday, a scheduled day off, or when a holiday falls on an employee's scheduled day off. Special duty leave may in limited circumstances also be granted to an exempt employee when the employee works extra hours in a work week.

2. Exempt Employee

An employee who is not subject to the overtime provisions of the Fair Labor Standards Act.

3. Non-Exempt Employee

An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

B. When Special Duty Leave May be Given

1. Types Of Work Eligible For Special Duty Leave

An employee may receive special duty leave when required to work hours that are not within the expected or assigned work hours. Examples are:

- a. Additional work in a workweek when such hours are not overtime hours;
- b. On a day when the office is closed, e.g., a weekend or in an emergency;
- c. On a holiday; or
- d. On a scheduled day off.

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2. Special Duty Leave Not Required Compensation

LDSS may, but are not required to, compensate employees for this extra work with special duty leave. Other forms of compensation may be given at the option of the LDSS. Within the same work week, the Director has the discretion to offset use of special duty leave earned against leave hours taken.

C. Earning and Using Special Duty Leave

1. Earning Leave

a. Non-Exempt Employees

Special duty leave is to be given to non-exempt employees on an hour-for-hour basis for hours actually worked.

b. Exempt Employees

Exempt employees are paid a salary for as many hours of work as may be required to complete assigned responsibilities. Special duty leave is not to be given to exempt employees for hours worked to complete projects because special duty leave may be given only when the employee is required by the Director to work weekends, holidays or office closings.

2. Special Duty Leave Must be Used or It is Lost

Accrued special duty leave lapses within 12 months from the date it is earned. In extenuating circumstances arising from LDSS needs and as approved by the Local Board, an LDSS may allow an employee to carry over some or all of the special duty leave balances and may provide a time period during which it must be used. Under normal circumstances, special duty leave is not used before it is earned.

3. Use

Accrued special duty leave may be used for the same purposes as annual leave.

4. Cashing Out of Special Duty Leave

At any time that the LDSS determines, it may cash out special duty leave. When it is cashed out, it shall be paid hour for hour at the employee's current average hourly rate of pay.

D. Special Duty Leave Must be Authorized

1. In Writing

Special duty leave cannot be earned unless it has been authorized in writing by the Director.

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2. In Advance

Special duty leave must be authorized before the employee works the extra hours. However, if emergency conditions exist which make it impossible to authorize special duty leave in advance, written authorization should be obtained as soon as possible thereafter.

E. Treatment of Special Duty Leave upon Change of Status

1. Payment When Leaving the LDSS

An employee shall be paid in a lump sum for the unused special duty leave balances when employment terminates for any reason. This payment shall be allocated to an equivalent number of days for purposes of unemployment compensation benefits.

2. Payment upon Employee's Death

Upon an employee's death, payment for the accrued special duty leave balances shall be made to the administrator or the executor of the estate. If there is no administrator or executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Rate of Payment

Each hour of special duty leave shall be paid at the employee's current average hourly rate of pay.

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Section IV Holidays

Purpose

The purpose of this policy is to notify employees of which days have been designated as observed holidays and the LDSS is closed.

Scope

This policy applies to all employees.

A. Days Observed as Holidays

1. Holidays

The following 12 paid holidays are observed by closing LDSS offices:

- New Year's Day (January 1)
- Lee Jackson Day (Friday preceding third Monday in January)
- Martin Luther King Day (third Monday in January)
- George Washington Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veteran's Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- The Friday following Thanksgiving
- Christmas Day (December 25)

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2. Other Holidays

- a. Should the Governor declare an official holiday that is not among those listed above, the LDSS will be closed and such holiday shall be observed.
- b. If the local government has adopted alternative holiday observances, the LDSS may elect to follow the locally observed holidays instead of the State's holiday schedule.

3. When Holidays Fall on a Weekend Day

An official holiday that falls on a Saturday will be observed on the preceding Friday.
An official holiday that falls on a Sunday will be observed on the following Monday.

B. Compensation Issues

1. When Required to Work on a Holiday

Offices are closed on official holidays and generally work is not to be performed. However, there may be certain employees who because of the nature of their job are scheduled to work on a holiday. If an employee is scheduled to work on a holiday, the employee may receive in addition to salary or wages special duty leave or cash compensation on an hour for hour basis.

2. Effect of Leave without Pay Status

If an employee is not on paid status on the scheduled workday immediately before and immediately after the holiday, no salary will be received for the holiday.

C. Religious Observances

1. Reasonable Accommodation

The LDSS will make reasonable accommodation for the religious needs of employees unless the accommodation will result in undue hardship to the LDSS.

- a. If an employee requests time off to participate in religious observances that fall during normal work hours, reasonable efforts will be made to accommodate for the religious observance.
- b. Employees should request leave in advance of the religious holiday. The earlier the request is made, it will be easier for the LDSS to make an accommodation.

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- c. If a full day absence creates an undue hardship, the LDSS will work with the employee to assure that reasonable time off will be given.
- d. If leave balances are insufficient to cover the absence, and the schedule for the work can be adjusted, the hours off are to be charged to leave without pay.

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